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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,002

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Santiago Echeverri

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EXAMINER

YANG, ANDREW

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

08/10/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/565,002	<b>Applicant(s)</b> ECHEVERRI, SANTIAGO	
	<b>Examiner</b> ANDREW YANG	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This action is in response to Applicant's amendment filed on May 12, 2009.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Dale et al. (U.S. Patent No. 4893619).

Dale et al. discloses a guide 10 having a shaft 30, a frame 40 situated between the shaft 30 and an instrument fixing means. The instrument fixing means is considered an end of frame 40 that connects to a surgical tool 20. The guide 10 has pointing means 150, 140 at the distal end of the shaft 30. Pointing means 150, 140 are parallel and are adjustable. An orientation means 130 is used to define a reference plane.

Claims 1, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Farmer et al. (U.S. Patent No. 5141512).

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Farmer et al. discloses a guide having a shaft 75, an instrument fixing means 71, and a frame 74 between the shaft 75 and instrument fixing means 71. The guide also has a pointing means 76 situated at the shaft distal end and orientation means 72 for defining a reference plane. The guide is used with a angle measuring device/calibration device (Figure 10B). The device of farmer et al. can also be considered a pelvic positioner having two feelers 66 and orientation means 73.

Claims 1, 3, 7, 8, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Subba Rao (U.S. Patent No. 5743265).

Subba Rao discloses a guide 60 having a shaft 80, an instrument fixing means at end 62 of the frame for attaching to tool 10. The frame is situated between the shaft 80 and instrument fixing means. A pointing means is situated at the distal 84 end of the shaft 80. The pointing means is a laser 90, and is considered situated at the distal end since the battery end 94 of the laser 90 is situated at a distal end of the shaft 80. An orientation means 60 defines a reference plane. The orientation means 60 comprises a bubble level 40 and is thus considered a dual-axis type since the bubble level 40 and the orientation pillar are on two different axes. The guide device is used with an acetabular cup instrument 10 having a shaft 20 a handle 24 and a distal end for receiving a cup positioner 100. The fixing means at end 62 is coupled to the tool, and thus is considered to be capable of having a quick release, such as a screw.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Subba Rao (U.S. Patent No. 5743235) in view of Sterrenberg (U.S. Patent No. 4393599).

Subba Rao discloses the claimed invention except for two bubble levels. Sterrenberg discloses a guide device having two bubble levels 23, 25 in order to orient the device in accordance to two different axes. It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Subba Rao with two bubble levels in view of Sterrenberg in order to orient the device with respect to two different axes. With regard to claim 6, it is only a functional recitation of the device and thus, is anticipated if the corresponding structure is shown and is capable of performing the function. It is considered that the device of Subba Rao as modified by Sterrenberg is capable of performing the claimed function.

Claims 1 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buechel et al. (U.S. Patent No. 5030221) in view of Subba Rao (U.S. Patent No. 6743235).

Buechel et al. discloses a pelvic orientation witness 100, having a pelvic fixing means 300, and an orientation means 400. Buechel et al. further discloses a device

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502 for use with an acetabular cup. Buechel et al. fails to disclose a guide member as claimed in claim 1. Subba Rao teaches the guide as claimed in claim 1 so that an instrument used with an acetabular cup can be properly aligned. It would have been obvious to one skilled in the art at the time the invention was made to construct the device of Buechel et al. in combination with the guide device as claimed in view of Subba Rao, so that the acetabular cup could be properly aligned.

### ***Response to Arguments***

In response to Applicant's argument that Dale fails to disclose an orientation means, the Examiner respectfully disagrees. The knob 130 orients the members 150 and 140 at certain locations of shaft 30 and the members 150 define a reference plane therebetween

In response to Applicant's argument that Farmer fails to disclose an orientation means, the Examiner respectfully disagrees. The insignia 73 are a means to orient the device at certain angles and with laser 80 define a reference plane.

In response to Applicant's argument that it would not have been obvious to one skilled in the art to combine the references of Subba Rao and Sterrenberg, the Examiner respectfully disagrees. The use of two bubble levels for the purposes of orienting as taught by Sterrenberg would have been obvious to one skilled in the art. The fact that Subba Rao discloses only one bubble level for an axis does not teach away from using two bubble levels for different axes, the use of two bubble levels would provide a more precise means of orientation.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ANDREW YANG** whose telephone number is (571)272-3472. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on (571)272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew Yang/  
Examiner, Art Unit 3775

/Thomas C. Barrett/  
Supervisory Patent Examiner, Art  
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